

NO. 24650

IN THE SUPREME COURT OF THE STATE OF HAWAII

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HAWAII VENTURES, LLC, Plaintiff

vs.

OTAKA, INC.; TAKAO BUILDING CO., LTD., formerly known as Takao Building Development Co., Ltd.; K.K. DAINI SEVEN; YUKIO TAKAHASHI; HAWAIIAN WAIKIKI BEACH, INC.; ALAKA'I MECHANICAL CORPORATION; HEWLETT-PACKARD COMPANY; HAWAII ENERGY MANAGEMENT CO., LLC; BUSINESS MANAGEMENT GROUP, INC.; BEACH SNACK EXPRESS, INC.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; and DOE GOVERNMENTAL UNITS 1-50, Defendants

and

ILWU LOCAL 142 and THEODORE H. SMYTH, Trustee, SMYTH FAMILY TRUSTS, Intervenor Defendants

and

OTAKA, INC.; HAWAIIAN WAIKIKI BEACH, INC.; TAKAO BUILDING, CO., LTD.; K.K. DAINI SEVEN; and YUKIO TAKAHASHI, Counterclaimants

vs.

LEUCADIA NATIONAL CORPORATION,  
Additional Counterclaim Defendant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 00-1-2427-08)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that the "Order Granting in Part and Denying in Part Intervenor ILWU Local 142's Motion to Treat Severance and Vacation Pay as Administrative Expenses, Filed May 15, 2001," entered September 28, 2001 (the "Order"), is not a final and appealable order pursuant to HRS § 641-1(a) (1993). The appeal of the Order is from the second part

of the foreclosure case filed in Civil No. 00-1-2427-08, and the second part of the foreclosure case has not been finally decided inasmuch as the circuit court has not entered a final order distributing the sales proceeds or finally ending all matters incidental to enforcement of the April 16, 2001 judgment of foreclosure. See Sturkie v. Han, 2 Haw. App. 140, 146-47, 627 P.2d 296, 301-02 (1981); Hoge v. Kane, 4 Haw. App. 246, 247, 663 P.2d 645, 646-47 (1983). The Order is not appealable under the collateral order doctrine because the Order neither "[1] conclusively determine[d] the disputed question," nor "[2] resolve[d] an important issue completely separate from the merits of the action[.]" Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321, 966 P.2d 631, 633 (1998) (citations and internal quotation marks omitted). The Order is also not appealable under the Forgay doctrine from Forgay v. Conrad, 47 U.S. 201 (1848), because the Order does not "require immediate execution of a command that property be delivered to the appellant's adversary[.]" Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (citations, internal quotation marks, and brackets omitted). Therefore, we lack appellate jurisdiction over this case. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 14, 2002.